

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

HANUMANA RAM

V/S

STATE & ORS.

CIVIL WRIT No. 3810 of 1992
UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA.

Date of Order

:

18.4.2006

PRESENT

HON'BLE SHRI N P GUPTA, J.

Mr. GIRISH JOSHI for Mr. MR SINGHVI, for the petitioner
Mr. BL BHATI, AGA, for the respondent

BY THE COURT:

This petition has been filed by the petitioner praying for direction to the respondents to consider the candidature of the petitioner for promoting him as L.D.C., and to so promote him with effect from 21.2.1991 at least, or from any other date, with consequential benefits, including seniority, experience, pay scale, promotion etc. This writ petition has been filed on 8.7.1992. The averments of the petitioner are that he possessed the academic qualification of Secondary School Examination. Then, it is alleged that he was selected as a Ward Boy, and was appointed vide office order dt. 12.11.1982, and he accordingly joined the service on 18.11.1982. Then, the seniority lists of Cooks and Ward Boy were issued, being

Annexure-3 and 4, wherein the petitioner was shown in the seniority list of Cooks, and his name was not shown in the list of Ward Boys. These are lists dated 5.5.1986 and 5/7.5.1986 respectively. Thereupon he submitted the objection Annexure-5, and has produced Annexure-6, being communication of the Chief Medical & Health Officer, Nagour, to the Deputy Director, forwarding the petitioner's application for appearing in the L.D.C. Examination of 1986-87, wherein the petitioner was shown as Ward Boy. Then, vide Annexure-7 dt. 17.5.1988, the names of Class IV Servants, who had completed five years, and were possessing prescribed academic qualification, were forwarded by the C.M. & H.O., Nagour, to the Joint Director, for consideration for promotion, and therein also the name of the petitioner was included at item no. 7. However, the petitioner was not promoted. The further allegations of the petitioner are, that he never applied for being appointed as Cook, he never worked as Cook, and has always been working as a Ward Boy. However, on his representation, the Joint Director asked the C.M. & H.O., to forward the factual position, as to whether he was appointed as a Ward Boy, or Cook. Be that as it may. Further averments of the petitioner are, that thus the petitioner has not been considered for promotion, and the persons junior to him have been considered, and promoted, vide orders dt. 21.2.1991, and 17.12.1991. These orders have been produced as Annexure-19 and 20. Then it is alleged, that these three

persons promoted vide Annexure-19 and 20 are clearly junior to the petitioner, as they have been appointed after the petitioner's appointment, as is clear from Annexure-4. With these averments, above reliefs have been claimed.

Reply has been filed by the respondents, contending inter alia, that the selections were made on the post of Ward Boy, Sweepers, Washermen, and Cooks, and the petitioner was appointed on the post of Cook. It was alleged that the common selections were made, because all the posts were in the same pay scale. A stand has been taken to the effect, that the petitioner was appointed as cook as there was no post of ward boy, available at Didwana, and the petitioner's name was accordingly included in the seniority list of cooks, and was not included in that of ward boy. Then in Annexure-6, the mention of the petitioner being ward-boy, has been pleaded to have been written by mistake, which does not create any right in favour of the petitioner. Then replying para-11, it is pleaded that the petitioner was appointed as a cook, and was getting some higher pay than that of ward-boy. However, when he came to know, that he cannot be promoted as LDC, from the post of Cook, then alone he desired to be designated as ward-boy, which application has not been accepted by the State. Then in para-12 it is pleaded, that though the petitioner's name was recommended for consideration, but the petitioner being cook, and there

being no procedure of promotion from the post of cook, the promotion could not be granted to the petitioner. Thus, in substance, the stand of the respondent is, that the petitioner was initially appointed as cook, and being cook, as there was no procedure for promotion to the post of LDC, the petitioner was not promoted.

A rejoinder has been filed, maintaining, that he was appointed as Ward Boy, and has always been discharging the services of ward boy. Then Annex.6 was pressed into service, by contending, that it is not open for the government to make any oral submission, contrary to the document Annex.6, and that this document cannot be disowned by the respondents, more so in view of the judgment of Hon'ble Supreme Court, reported in State of Assam Vs. Raghava Rajgopalchari reported in 1972 SLR-44, and that the petitioner, in fact, having been appointed as ward boy, being eligible, his case was recommended vide Annex.7. Then in para-10, a pleading has been taken to the effect, that under the Rajasthan Civil Services (CCA) Rules 1958, the entire services of the state have been classified, and thereunder there is no service below Class IV service, and therefore, the respondents are in error, in contending, that the petitioner is not even a Class IV employee, and under the Rules of 1957, a Class IV employee is eligible for promotion to the post of LDC, therefore, the petitioner is entitled to be considered for promotion to the post of

LDC. It was maintained, that he has wrongly been denied promotion to the post of LDC.

At the time of hearing, learned counsel for the respondent pointed out, that vide office order dated 19.12.2005, the DPC considered the candidature of the persons for promotion on the post of LDC, against 15% quota, and on consideration of seniority-cum-merit, the petitioner has been promoted against the vacancy of the year 2003-04, and then, vide order dated 27.1.2006, he has been ordered to be posted at Government Bangar Hospital, Didwana, and thus, it was sought to be contended, that the grievance of the petitioner has been redressed, and the writ petition is required to be dismissed, to this, learned counsel for the petitioner submitted, that the petitioner has claimed to be entitled to be promoted w.e.f. the date, persons junior to him have been promoted, as such, his writ petition very much survives.

I have heard learned counsel for the parties and have gone through the pleadings, the relevant rules, being the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957, Rajasthan Civil Services (CCA) Rules 1958, and the Rajasthan Class IV Services (Recruitment and Other Service Conditions) Rules, 1963.

At the outset, it may be noticed that so far as

the pleadings of the parties are concerned, initially the parties were at variance on the question, as to whether the petitioner was appointed on the post of ward boy or cook, and the categorical stand of the respondent was, that he was appointed as cook, and there is no procedure available for promotion of cook to LDC, and therefore, the petitioner is not entitled to promotion.

Without going into the question, as to whether the petitioner was appointed as ward boy, or cook, for the purpose of argument, even if it is taken, that he was appointed as cook, it is nowhere the case of the respondent, that his categorisation was ever changed from that of cook to ward boy, and the fact remains that, notwithstanding that, by the order produced by the respondent, being dated 19.12.2005, he has been promoted as LDC, against the vacancies of the year 2003-04, this does make it clear, that the petitioner, even as a cook, is very much eligible to be promoted on the post of LDC.

Then considering the case from the stand point of the provisions of the rules also, according to rule 7(3) of 1957 Rules, 15% of the posts, as determined under Rule 9, are to be filled by promotion, from out of Class IV employees. Then it is not specified therein, that out of various categories of Class IV employees, the promotion will be confined any one, or more, of the categories, nor

is it provided, that the promotion will not be available to any one, or more, of the categories of Class IV employees, even if the incumbent possesses the requisite academic qualification. From perusal of the Class IV Rules, 1963, it transpires, that in the Schedule appended thereto, neither Ward Boy, nor Cook, are the designation, included in the schedule, but then, admittedly the petitioner has been appointed as a class IV employee, irrespective of the controversy, as to whether he was appointed as cook or ward boy.

In that view of the matter, since admittedly, the petitioner has been appointed as LDC, under the Rules of 1957, he was very much eligible to be considered for promotion, against the permissible quota, on his acquiring requisite experience, as he is possessing the requisite academic qualification, and since the promotion is to be made on the basis of seniority cum merit, he was required to be considered at the appropriate time, at which the other junior candidates were to be considered for promotions, on the basis of seniority.

Since it is not in dispute, that the persons junior to the petitioner, as pleaded in para 16 and 17 of the writ petition have been promoted as LDC, and the only stand taken is, that the petitioner was not promoted, on account of his being appointed as cook, for which post,

there is no procedure for promotion, the obvious consequence is, that the petitioner was required to be considered for promotion at that time, and unless otherwise found unfit, he was required to be promoted, w.e.f. the date, the persons junior to him had been promoted.

Accordingly, the writ petition is allowed, and it is directed, that the case of the petitioner be considered for promotion to the post of LDC, w.e.f. the date, when persons junior to him had been promoted, including the persons detailed in para 16 and 17 of the writ petition, and unless otherwise found to be unfit for promotion, he shall be promoted, with all consequential benefits. This be done within a period of two months from today, and the amount so becoming payable, consequent upon such promotion, shall be calculated, and paid, to the petitioner, within a period of four months from today. It is made clear, that if this amount is not paid within four months, the amount will carry interest @ 12%, from the date, the amount became due, till the date of actual payment. It is further directed, that if this order is not complied with, it shall be executable by the Principal Civil Court concerned, as a Decree of Civil Court, in accordance with the provisions of Order 21 C.P.C. The parties shall bear their own costs of this writ petition.

(N P GUPTA), J.

/Sushil/